

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

KEVIN LEA §  
v. § CIVIL ACTION NO. 5:09cv34  
S. GESLEMAN, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
ON THE INDIVIDUAL DEFENDANTS' MOTION TO DISMISS

The Plaintiff Kevin Lea, a former inmate of the Federal Correctional Institution in Texarkana now confined in federal custody in Arkansas, filed this lawsuit under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) complaining of alleged violations of his legal rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Lea originally sued physician assistants S. Gessleman and B. Stuart, medical administrator V. Simien, and nurses M. Rostellan and G. Allen, all of whom are at FCI-Texarkana. He later amended his complaint to add the United States as a defendant, raising claims under the Federal Tort Claims Act. All of the Defendants have filed motions to dismiss and for summary judgment.

On March 4, 2010, the Magistrate Judge issued a Report recommending that the motions to dismiss and for summary judgment filed by the individual Defendants be granted based on Lea's failure to exhaust his administrative remedies. A copy of this Report was sent to Lea at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-

to proposed factual findings and legal conclusions accepted and adopted by the district court.  
Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in the cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 60) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the individual Defendants' motions to dismiss for lack of jurisdiction, for failure to state a claim, and for summary judgment (docket no.'s 23 and 49) are hereby GRANTED. It is further

ORDERED that the Plaintiff's claims against the Defendants S. Gessleman, B. Stuart, V. Simien, M. Rostellan, and G. Allen are hereby DISMISSED with prejudice for purposes of proceeding *in forma pauperis*. Finally, it is

ORDERED that these above-named Defendants are hereby DISMISSED as parties to the lawsuit. The dismissal of these claims and parties shall have no effect upon the Plaintiff's claims against the United States under the Federal Tort Claims Act.

**SIGNED this 29th day of March, 2010.**



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DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE